IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3155 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Appellant(s)
Versus
AMBALAL GORDHANDAS THAKKAR & 1 - Defendant(s)

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Appearance :
MR DIPEN A DESAI for Appellant(s) : 1,
MR KL DAVE for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 16/10/2007

ORAL JUDGMENT

1. The short facts of the case appears to be that on 4.2.1989, Ilaben Kantilal Chotai in capacity as pillion rider and the deceased Chandrikaben

Ambalal in capacity as the driver were going on Luna Moped and at about 2.45 p.m., when they were passing by Madhavpura Municipal Bus Stand outside Dariapur Darwaja, one S.T. Bus bearing Registration No.GRU 8228, came in speed from their backside and, as per the claimant, it had dashed with the luna. The driver-deceased Chandrikaben as well as the pillion-rider Ilaben sustained injuries and ultimately deceased Chandrikaben succumbed to the injuries, whereas Ilaben was hospitalized. The claim petition was filed by the legal representatives of the deceased Chandrikaben namely father and mother being MACP No.72 of 1989 for the recovery of the compensation of Rs.6 lac, whereas injured Ilaben filed claim petition being MACP No.74 of 1989 for the recovery of the compensation of Rs.50,000/-. The Tribunal after adjudication awarded the compensation of Rs.3,80,000/- with interest at the rate of 15% per annum from the date of filing the petition till realisation with the further observations that if the amount is paid within a period of three months, the

interest shall be calculated at the rate of 12% per annum. It is under these circumstances, the present appeal before this Court.

2. Heard Mr.Dipen Desai, learned Counsel for the appellant and Mr.K.L.Dave, learned Counsel for the original claimants. Considered the judgement and award of the Tribunal as well as the record and proceedings of the Tribunal.

3. The learned Counsel for the appellant first contended that as per the panchnama, there is no damage to the luna and, therefore, the possibilities of the deceased having lost the control over the moped and having fallen down from the moped cannot be ruled out. He further submitted that under such circumstances, it would be a case for attributing contributory negligence and, therefore, the error is committed by the Tribunal.

4. The examination of the said contention shows that the complaint was filed by Ilaben, who was pillion-rider and also the eye-witness. As per the statement made in the complaint the bus dashed from the backside of the luna and as a

result thereof the deceased, who was driving the vehicle lost control and had fallen down and the bus ran over the deceased. It is not necessary that the damage must be there to the luna if the jerk to the luna is a very nominal. The luna is a small moped and if two persons are sitting, with the normal jerk, it may result into loss of control over the vehicle by the driver. Therefore, merely because no damage is mentioned in the panchnama to the moped/luna would not be a sufficient ground to conclude that the deceased, who was driving the vehicle lost control over the vehicle of her own and, therefore, resulted into the accident. Further, two important aspects deserve to be recorded in the present case; one is that the eye-witness has stated for the dashing of the bus from the backside to the luna and the second is that in the criminal case for rash and negligent driving against the driver of the ST Bus and causing death of the deceased Chandrikaben, there is a conviction by the Criminal Court. The degree of proof in the criminal case is more in comparison

to the degree of proof required for fastening of the tortuous liability as per the Motor Vehicles Act. Therefore, keeping in view the two factual circumstances, even otherwise also it cannot be accepted that the deceased, who was driving the luna, of her own, must have lost the control over the vehicle and the accident occurred on account of the same. Further, if the say of the complainant is believed even by the Criminal Court and it has resulted into conviction, the contention as sought to be canvassed on behalf of the appellant that there was contributory negligence by the driver of the luna namely; deceased Chandrikaben cannot be accepted. Therefore, the said contention cannot be accepted in view of the facts and circumstances of the present case.

5. The learned Counsel for the appellant next contended that the assessment of the income by the Tribunal is on higher side at Rs.4,500/- per month and, therefore, there is an error committed by the Tribunal.

6. The examination of the said contention shows

that the deceased was working as a nurse in the hospital and the proof of income of her salary was produced of Rs.2,779/-. The Tribunal has also recorded that had she continued in service for a period of 25 years, she would have reached the maximum income of Rs.8,000/- per month. Therefore, if both the amounts are considered and the mean is arrived, it would exceed Rs.4,500/-. Further, if the said contention is examined from a different angle, then also if the principles of prospective income are considered, the income would be about 1.5 times the actual income. Therefore, keeping in view all the circumstances, it can be said that the Tribunal has taken a conservative view of the assessment of income at Rs.4,500/- and the same cannot be said as unjust or improper. The Tribunal thereafter has deducted 1/3rd amount towards her personal expenses and 2/3rd is considered for dependency benefits. Hence, the approach on the part of the Tribunal cannot be said as unjust or unreasonable.

7. The last contention raised on behalf of the

appellant of awarding interest at the rate of 15% by the Tribunal deserves consideration. It is true that as such the awarding of interest is falling within the discretionary jurisdiction of the Tribunal, however, such discretion should be exercised by way of compensatory measure and not as penalty to be imposed upon the parties to the proceedings. The operative part of the order passed by the Tribunal shows that if the amount is deposited within three months, then the interest is to be paid at the rate of 12% per annum, but if there is a failure, the interest would be at the rate of 15% per annum. Therefore, the Tribunal has tried to apply a penal measure, instead of compensatory measure in exercise of the discretion for awarding interest. Therefore, considering the facts and circumstances, it appears that irrespective of the fact that the amount is deposited or not, the Tribunal ought to have awarded interest at the rate of 12% per annum from the date of application until the award is passed by the Tribunal.

8. It further appears that if the principles of awarding of interest by way of compensatory measure are considered, the same situation may continue after filing of the appeal up to 2000. After, after the year 2000, the appeal has remained pending for about seven years, but the fact remains that the rate of interest even for FDRs has gone down. When the appeal was pending before this Court, the question of awarding of interest can be modified by this Court as per the facts and circumstances, keeping in view the principles of awarding interest by way of compensatory measure. Therefore, it would be just and proper to observe and declare that the claimant would be entitled to interest at the rate of 12% from the date of the application till the year 2000 and from January, 2000 until the balance amount is fully recovered, the claimant(s) would be entitled to the interest at the rate of 9% per annum.

9. In view of the aforesaid observations and discussions, the judgement and award passed by the Tribunal for awarding compensation of

Rs.3,80,000/- is hereby confirmed. However, the original claimant would be entitled to the interest at the rate of 12% per annum from the date of application until the year 2000 and while calculating the interest, the amount already deposited or paid to the claimant(s) pending the appeal, shall be deducted/adjusted. It is further observed and directed that the claimant(s) shall be entitled to the interest at the rate of 9% per annum from January 2000 until actual realisation of the amount.

10. The appeal is partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs so far as the present appeal is concerned. However, the cost awarded by the Tribunal is hereby confirmed. Decree accordingly.

16.10.2007 **(Jayant Patel, J.)**

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